

### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Carol Johns on 11/2/09.

The application has been amended as follows:

Claims:

The term "or preventing" in line 1 and line 3 of claim 35 has been removed.

The term "a" has been replaced with – the – on line 2 of claim 35.

The term "a nucleotide sequence of" has been removed in lines 7-8 of claim 44.

The term "or preventing" in line 1 of claim 60 has been removed.

The term "a nucleotide sequence of" has been removed in lines 8-9 of claim 60.

The term -- non-small cell lung cancer (NSCLC) -- replaced NSCLC in line 1 of claim 60.

**Examiner's Comments**

***Election/Restrictions***

Claims 44, 48, 54-56 and 60 are directed to an allowable product. Pursuant to the procedures set forth in MPEP § 821.04(B), claim 35, directed to the process of making or using an allowable product, previously withdrawn from consideration as a result of a restriction requirement, is hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Because all claims previously withdrawn from consideration under 37 CFR 1.142 have been rejoined, **the restriction requirement as set forth in the Office action mailed on 10/30/08 is hereby withdrawn.** In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Whiteman whose telephone number 571-272-0764. The examiner can normally be reached on from 6:30 to 4:00 (Eastern Standard Time). The examiner can also be reached on alternate Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's acting supervisor Tracy Vivlemore can be reached on 571-272-2914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Brian Whiteman/  
Primary Examiner, Art Unit 1635